UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CV-03-97-B-W**
	)	
GARY K. CYR, et al.	)	
	)	
Defendant	)	

ORDER DENYING MOTION FOR HEARING
AND AFFIRMING RECOMMENDED DECISION
OF THE MAGISTRATE JUDGE

On March 26, 2004, the United States Magistrate Judge filed her Recommended Decision that the Court grant the Government's unopposed Motion for Default Judgment against Defendant Gary Cyr, deny Defendant Robertine Cyr's Motion for Summary Judgment against the Government, and grant the Government's Motion for Summary Judgment against Robertine Cyr. Robertine Cyr filed an Objection to the Recommended Decision on April 3, 2004, and requested oral argument on her Motion for Summary Judgment. The Government replied to the Objection, arguing the Recommended Decision was correct, and filed a response to the request for oral argument, arguing the Court did not need the benefit of oral argument to decide this matter.

I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; I have made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in her Recommended Decision, and

determine that no further proceeding is necessary.[1, 2] The Defendant Robertine Cyr's Request for Oral Argument is DENIED. The Government's Motion for Default Judgment against Defendant Gary Cyr is GRANTED; the Defendant Robertine Cyr's Motion for Summary Judgment against the Government is DENIED; and the Government's Motion for Default Judgment against the Defendant Robertine Cyr is GRANTED.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 6th day of August, 2004.

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[1] In her Objection, the Defendant Robertine Cyr implies the Recommended Decision is premised upon her request for homestead protection being a counterclaim as opposed to an affirmative defense. The distinction is immaterial. As United States v. Bisson explains, "failure to exhaust his administrative remedies precludes [the defendant] from asserting his affirmative defense and counterclaim in this court." 646 F. Supp. 701, 702 (D.S.D. 1986) (emphasis added). Even if exhaustion were required only in the event her request constituted a counterclaim, she has not established that a request for homestead protection is properly deemed an affirmative defense. Cf. Black's Law Dictionary (8th ed. 2004) (defining "counterclaim" as, "a claim for relief asserted against an opposing party after an original claim has been made") and Black's Law Dictionary (defining "affirmative defense" as, "a defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claims, even if all the allegations in the complaint are true"). However, this decision is not grounded upon nomenclature. F. Rul. Civ. P. 8(c) ("When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation").

Congress's underlying policy objectives, reflected in 7 U.S.C. § 6912(e), as Bisson detailed, were to grant authority to the DOA as an administrative agency, protect agency autonomy, aid judicial review, and promote judicial economy. 646 F.Supp. at 706 (quoting Andrade v. Lauer, 729 F.2d 1475, 1484 (D.C. Cir. 1984)). The question is whether Ms. Cyr was required to present her request for homestead protection through the appeals process to the DOA to comply with the exhaustion requirements of § 6912(e). The Magistrate Judge has concluded, and this Court agrees, that she was. To do otherwise, as Judge Kravchuk quoted from Bisson, would "encourage people to ignore" the appeals process set up by the agency and, thus, destroy its usefulness; to circumvent the opportunity the appeals process gives the agency to "correct its own error," if any existed; and to avoid potentially unnecessary judicial intervention. Bisson, 646 F. Supp. at 706.

[2] In her Objection, Defendant Robertine Cyr made arguments regarding the merits of the Government's denial of her request for homestead protection that she did not present to the Magistrate Judge. An unsuccessful party is not entitled to de novo review by the district judge of an argument never seasonably raised before the magistrate judge. Fireman's Ins. Co. v. Todesca Equip. Co., Inc., 310 F.2d 32, 38 (1st Cir. 2002); see Borden v. Sec'y of Health and Human Serv., 836 F.2d 4, 6 (1st Cir. 1987) ("Parties must take before the magistrate, 'not only their "best shot," but all of their shots'") (quoting Singh v. Superintending Sch. Comm., 593 F.Supp. 1315, 1318 (D. Me. 1984)). Accordingly, the Court has not considered these arguments.

Plaintiff

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V.

Defaulted Party

GARY K CYR

HUMAN SERVICES, MAINE DEPARTMENT OF

MITCHELL L CYR IRREVOCABLE TRUST, TRUSTEE OF

Defendant

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